

## SERIOUS AND RECURRING MALTREATMENT

Serious maltreatment, as defined at Minnesota Statutes, section 245C.02, subd. 18, and recurring maltreatment, as defined at Minnesota Statutes, section 245C.02, subd. 16, result in disqualification.

**Subd. 18. "Serious maltreatment"** means the following:

- I. Sexual Abuse
- II. Maltreatment Resulting in Death
- III. Neglect Resulting in Serious Injury which reasonably requires the "care of a physician<sup>\*</sup>," whether or not the care of a physician was sought, or "abuse resulting in a serious injury.<sup>\*</sup>"

"Abuse Resulting in Serious Injury" includes the following:

- Bruises
- Bites
- Skin laceration or tissue damage
- Fractures
- Dislocations
- Evidence of internal injuries
- Head injuries with loss of consciousness
- Extensive second-degree or third-degree burns and other burns for which complications are present
- Extensive second-degree or third-degree frostbite, and others for which complications are present
- Irreversible mobility or avulsion of teeth
- Injuries to the eyes
- Ingestion of foreign substances and objects that are harmful
- Near drowning
- Heat exhaustion or sunstroke

- IV. Neglect resulting in criminal sexual conduct against a child or vulnerable adult.

\* 245C.02, Subd. 18. (b) "Care of a physician" is defined as treatment received or ordered by a physician, physician assistant, or nurse practitioner, but does not include:

- (1) diagnostic testing, assessment, or observation;
- (2) the application of, recommendation to use, or prescription solely for a remedy that is available over the counter without a prescription; or
- (3) a prescription solely for a topical antibiotic to treat burns when there is no follow-up appointment.

**Subd. 16. "Recurring maltreatment"** means more than one incident of maltreatment for which there is a preponderance of evidence that the maltreatment occurred and that the subject was responsible for the maltreatment.

## **SERIOUS AND RECURRING MALTREATMENT**

(continued)

### **"Two-Tiered" Approach For Serious Maltreatment**

Under the current law, if maltreatment due to abuse is determined and one of the injuries on the list has occurred as a result of the abuse, the maltreatment is serious and disqualification is appropriate. If maltreatment due to neglect is determined, then it is necessary to determine whether there was an injury that reasonably required the care of a physician, whether or not care was sought. In addition, neglect (e.g. failure to provide necessary supervision) that results in criminal sexual conduct against a child or vulnerable adult is serious maltreatment.

In light of these distinctions regarding "serious maltreatment," it is critical that the licensor know whether the maltreatment determination was based on abuse or neglect. If this is not clear from the child protection report, the licensor should consult the child protection worker to determine whether the substantiated maltreatment was abuse or neglect, so the licensor can determine which standard applies.

### **Neglect and "Care of a Physician"**

- **Diagnostic Testing:** Care of a physician is defined as "treatment received or ordered by a physician, physician's assistant, or nurse practitioner, but does not include diagnostic testing, assessment, or observation; the application of, recommendation to use, or prescription solely for a remedy that is available over the counter without a prescription; or a prescription solely for a topical antibiotic to treat burns when there is no follow-up appointment." Diagnostic testing, assessment, and observation are excluded so that a person is not penalized solely for obtaining a thorough assessment of any possible injuries. For example, if an individual falls and a physician orders x-rays that reveal no injuries, the x-rays would be for diagnostic or assessment purposes and would not constitute care of a physician.
- **Care by a Nurse:** There may be situations when the care is provided by a nurse rather than directly by a doctor. In some circumstances, nurses are delegated certain duties under the supervision of a physician or group of physicians; this would be considered to be "care of a physician". This delegation normally happens through a physician's order or a medical facility's "standing orders." If the care provided is that which typically comes under the authority of a physician, then it will likely be considered to be "care of a physician". If you are uncertain, you should ask the nurse whether the care given is that which s/he has authority to provide as a nurse, or whether it is delegated or supervised by a physician. You may also contact one of the licensors at the Minnesota Department of Human Services (DHS), Division of Licensing, for assistance.
- **When a Physician was not consulted:** In circumstances when a physician was not consulted, there may be a question as to whether a physician should have been consulted. This determination will need to be made at the county level, in assessing whether a person should be disqualified due to serious maltreatment. How this determination (of whether a physician's care should have been sought) will be made depends on county policy, please check with your city or county attorney to find out if s/he wants to be involved in that decision. The licensors at DHS are also available to provide technical assistance.

### **Assistance from DHS**

Please contact one of the licensors at DHS if you have questions.

## SERIOUS AND RECURRING MALTREATMENT SCENARIOS

### I. Neglect, Not Serious Maltreatment

- A. Facts: A family child care provider leaves children unsupervised, during which time one child bites another. Skin is not broken and no medical care is sought. Maltreatment by neglect is determined.
- B. Analysis: Because neglect is involved, the question is whether the injury reasonably required the care of a physician, whether or not care was sought. In this case the bite did not break the skin, no other unusual circumstances were noted, and the care of a physician was not needed. This is not serious maltreatment. (This same analysis would apply to situations where one child is hurt by another child, bruises but nothing more result and maltreatment due to neglect for lack of supervision is determined.)

### II. Abuse, Serious Maltreatment

- A. Facts: A family child care provider bites a child. The skin is not broken and no medical care is sought. Maltreatment by abuse is determined.
- B. Analysis: Once abuse is determined, if the resulting injury is on the list of serious injuries, then it amounts to serious maltreatment. Bites are on the list of injuries, and thus this is serious maltreatment.

### III. Neglect, Serious Maltreatment

- A. Facts: A vulnerable adult ("VA") is left alone on a couch for a few minutes. The staff person knows that staff need to stay with the VA when on the couch because the VA could fall. The VA falls and fractures her/his thumb, which was set by a physician. Maltreatment by neglect is determined.
- B. Analysis: Neglect is involved, and the question becomes whether the care of a physician was reasonably required. The individual sustained a fracture which was treated by a physician, and thus "care of a physician" was required and this is serious maltreatment. (This same analysis would apply if a family child care provider left children unsupervised, one child fell on another and a leg was broken, and maltreatment by neglect is determined.)
- A. Facts: A vulnerable adult has a history of sexual behaviors toward others and his/her supervision plan addresses these behaviors. When the provider fails to supervise the vulnerable adult, the vulnerable adult engages in sexual contact with another vulnerable adult in the foster home. There is a finding of neglect by the provider.
- B. Analysis: Because the provider is responsible for neglect, and the neglect resulted in criminal sexual conduct against a vulnerable adult, this is serious maltreatment. (This same analysis would apply if a family child care provider or a foster parent left children unsupervised with a resulting neglect finding and a child was sexually assaulted).

### IV. Sexual Abuse, Serious Maltreatment

- A. Facts: A child protection report indicates that an 11-year-old foster child was sexually abused by a foster parent. After examination and interviews, maltreatment by sexual abuse is determined.
- B. Analysis: Sexual abuse is always considered serious maltreatment.

**V. Recurring Maltreatment (Not Serious Maltreatment)**

- A. Facts: On Day 1, a toddler is missing for over an hour and found wandering around on a busy street. Maltreatment by neglect is determined. On Day 2, the same child care provider leaves an infant locked in the car, with windows rolled up, while shopping. Maltreatment by neglect is determined.
- B. Analysis: In each instance, neglect was determined but there were no injuries and thus the care of a physician was not required. Neither incident meets the definition of serious maltreatment. Disqualification is appropriate, however, due to recurring maltreatment.

**VI. Care of a Physician, Serious Maltreatment**

- A. Facts: A staff person gives a VA the incorrect amount of a medication, necessitating a visit to the emergency room. Laboratory tests are conducted. Medication is administered to counteract the effects of the overdose. Maltreatment by neglect is determined.
- B. Analysis: Because neglect is involved, the issue is whether or not the care of a physician was reasonably required. The VA was taken to the hospital and laboratory tests were conducted. The assessments or diagnostic testing that was done does not constitute care of a physician. However, in this case, medication was administered as ordered by a physician, and thus the injury or harm that resulted required the care of a physician. This is serious maltreatment.

**VII. Not Care of a Physician, Not Serious Maltreatment**

- A. Facts: A foster child requests bleach to clean her bedroom. This foster child has a history of depression and prior to this incident indicated she wanted to commit suicide. The foster parent gives the foster child the bleach and, a little while later, the foster child said she was going to drink the bleach and would not give it back to the foster parent. The foster child was left alone and drank the bleach. The foster child was admitted to the hospital for observation. The physician found no physical symptoms from drinking the bleach. Maltreatment by neglect was determined.
- B. Analysis: This involves neglect and the question is whether or not the care of a physician was required. Although the foster child was admitted to the hospital, it was for observation only. This does not constitute care of a physician. Further, the physician found no physical symptoms. Because care of a physician was not required, this is not serious maltreatment.

Some of the above scenarios may involve rule violations even if they do not meet the definition of serious or recurring maltreatment. The maltreatment finding itself warrants some type of licensing sanction.